

JAN 20 2006

FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5534

DATES COMPLAINTS FILED Sept 7,
2004, Sept 17, 2004, October 19, 2004

DATES OF NOTIFICATION Sept 23,
2004, Oct 25, 2004, June 17, 2005

LAST RESPONSE RECEIVED Oct 1,
2004

DATE ACTIVATED May 10, 2005

Expiration of SOL August 21, 2009 -
October 16, 2009

COMPLAINANT

Bridget Gallagher, Alaska Democratic Party

RESPONDENTS

Business Alaska, Inc
Jack Frost and Friends
Jack Frost, President, Jack Frost & Friends

RELEVANT STATUTES

2 U S C § 431(4), (9), (17)
2 U S C § 433(a)
2 U S C § 434(a), (b), (c), (f), (g)
2 U S C § 441b
2 U S C § 441d
11 CFR § 100 16(a)
11 CFR § 100 22
11 CFR § 100 29
11 CFR § 104 20
11 CFR § 109 10
11 CFR § 110 11
11 CFR § 114 2
11 CFR § 114 10
11 CFR § 114 14

INTERNAL REPORTS CHECKED

Disclosure Reports

FEDERAL AGENCIES CHECKED

Internal Revenue Service

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1 **I. INTRODUCTION**

2 This matter concerns three newspaper advertisements supporting Alaska's
3 incumbent Senator Lisa Murkowski and one television advertisement opposing former
4 Alaska Governor Tony Knowles, Senator Murkowski's opponent in the Senate race. The
5 complaint alleged that Business Alaska ("BA") is a political committee under the Federal
6 Election Campaign Act of 1971, as amended ("the Act"), and that BA violated the Act by
7 "failing to file with" the Commission, "conspiring to air electioneering communications"
8 and failing to properly report that communication to the Commission, and failing to
9 follow "stand by your ad" disclaimer requirements. Supplements to the complaint
10 alleged that BA made improper corporate expenditures by paying for the newspaper
11 advertisements that supported Senator Lisa Murkowski. The complaint further alleged
12 that Jack Frost, president of Jack Frost & Friends ("JFF"), "aided" BA's political
13 advertising and that Mr. Frost's voice was used in the BA television advertisement.

14 In response to the complaint, BA claimed that it was not required to file with the
15 Commission because it was a 501(c)(6) organization. In its response to the electioneering
16 communication allegation, BA claimed that its expenditures were under \$10,000, and
17 claimed that it did not air the television ad within the electioneering communication
18 period identified by the Commission. BA acknowledged that it was required to file an
19 FEC form 5, which non-political committees use to report independent expenditures, but
20 stated that it would be filed "on or before October 15, 2004."¹ See Response of Business
21 Alaska, dated October 4, 2004.

22 Mr. Frost stated that JFF was an advertising and public relations firm that made
23 advertising buys for television airtime on behalf of BA. He further stated that he

¹ To date, no such form has been filed.

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1 personally paid for production of BA's television ad, and that he was compensated \$100
2 to use his voice in BA's television ad See Response of Jack Frost & Friends, dated
3 October 6, 2004 ("JFF Response")

4 Based on a review of available information, we recommend that the Commission
5 (1) find reason to believe that BA violated 2 U S C §§ 433, 434(a) and 434(b) by failing
6 to register and file reports with the Commission, (2) in the alternative, if not a political
7 committee, find reason to believe that BA violated 2 U S C § 441b by making corporate
8 expenditures outside its restricted class and by making electioneering communications,
9 and 2 U S C §§ 434(c) and 434(f) by failing to file proper reports with the Commission,
10 (3) find reason to believe that BA violated 2 U S C § 441d by failing to include adequate
11 disclaimers in its communications, (4) find no reason to believe JFF violated the Act and
12 close the file with respect to this respondent, and (5) take no action at this time with
13 respect to Jack Frost

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Background**

16 **1. Business Alaska and Jack Frost & Friends**

17 BA is a 501(c)(6) nonprofit organization incorporated in Alaska in March 2004
18 A 501(c)(6) organization consists of business leagues, chambers of commerce, real-estate
19 boards, and boards of trade not organized for profit 26 U S C § 501(c)(6) According to
20 the IRS, such an organization must be

21 primarily engaged in activities or functions that are the basis for its
22 exemption It must be primarily supported by membership dues and other
23 income from activities substantially related to its exempt purpose A
24 business league, in general, is an association of persons having a common
25 business interest, the purpose of which is to promote that interest and not
26 to engage in a regular business of a kind ordinarily carried on for profit

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2 Dept of the Treasury, IRS, "Tax-Exempt Status for Your Organization," Publication 557
3 (March 2005) Trade associations and professional associations are considered business
4 leagues The organization must be "devoted to the improvement of business conditions
5 of one or more lines of business as distinguished from the performance of particular
6 services for individual persons It must be shown that the conditions of a particular trade
7 or the interests of the community will be advanced " *Id*² Dues are not tax exempt if
8 used to participate or intervene in a political campaign for or against any candidate for
9 public office *Id*

10 BA's February 2004 application with the IRS for an employer identification
11 number ("EIN"), and provided to the Commission by BA, stated that its "services
12 provided" were "political advocacy and public education " See Attachment 1 In its
13 response to the complaint, BA stated that its purpose was "encouraging effective
14 government in Alaska and our local communities" and its goals were "to provide a
15 storehouse of information, advice and means for those who share our view of trustworthy
16 leadership " See BA Response BA has not registered with the Commission nor does it
17 appear to be affiliated with a registered political committee

18 We were able to locate only minimal publicly available information regarding
19 BA, such as its listing as a corporate entity on the Alaska Corporations, Business and
20 Professional Licensing website, BA's application with the IRS for an EIN, and BA's
21 assertion that it filed as a 501(c)(6) entity Other than press reports relating to the ads that

² A line of business refers to an entire industry or all components of an industry within a geographic area
Id Examples provided by the IRS of activities that illustrate a common business interest include promotion
of higher business standards, encouragement of the use of goods and services of an entire industry,
establishment and maintenance of the integrity of a local commercial market, and operation of a trade
publication intended to benefit an entire industry *Id*

1 are the subject of this complaint, we were not able to locate any other information
2 regarding other activity or business conducted or sponsored by BA. BA did not supply
3 any such information in its response to the complaint

4 The only information we have regarding JFF is what JFF provided in response to
5 the complaint that it is an advertising and public relations firm that apparently purchased
6 airtime for its client BA's television ad

7 **2. The Advertisements**

8 During the 2004 election season, BA paid for at least three published ads in the
9 Anchorage Daily News and one television ad relating to the Alaska Senate race between
10 Senator Lisa Murkowski and former Governor Tony Knowles. All three newspaper ads
11 were full-page ads picturing Senators Murkowski and Ted Stevens. Senator Stevens was
12 not running for re-election at that time. One of the ads also pictured Representative Don
13 Young, who like Senator Stevens, was also not on any ballot at the time. The newspaper
14 ads expressly advocated the election of Senator Murkowski. The television ad, however,
15 featured only Governor Knowles and did not contain express advocacy for or against
16 Governor Knowles

17 The first newspaper ad ran in the Anchorage Daily News on August 21, 2004 (the
18 "August 21" ad"). See Attachment 2, p. 1.³ It listed the respective Senate or House
19 committees on which Senators Murkowski and Stevens and Representative Young served
20 and their seniority on those committees. The ad discussed in greater detail Senator
21 Murkowski's seniority in the Senate. The ad continued, "*This is great news for Alaskans!*"

³ The copies attached are the best quality we were able to obtain based on the photocopies provided by the complainant. We attempted to clean up the ads as much as possible for ease of reading, but we were unable to fix certain problems. For example, we received full-page ads cut into two pages and some words appear to have been cut off in the copying done by the complainant.

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1 [emphasis in original] Continuing our seniority and committee chairmanships in
2 Congress is highly important when it comes to protecting Alaska's economy, resource
3 development, jobs and home values Strong and growing stronger, seniority to protect
4 Alaska " The ad ended with the statement, "Please support Alaska and Senator Lisa
5 Murkowski," listed the date of the primary election (August 24, 2004), and listed the
6 times the polls would be open

7 The second ad, run on September 6, 2004 (the "September 6th ad"), compared
8 Senator Murkowski's and Stevens' backgrounds including the facts that both were
9 initially appointed to their positions, both were previously elected to the Alaska State
10 House of Representatives, and both were former Alaska State House of Representatives
11 Majority Leaders See Attachment 2, pp 2-3 The ad then stated,

12 Many Alaskan [sic] have already noticed how much Senator Lisa
13 Murkowski and Senator Ted Stevens have in common *This can be very*
14 *good news for Alaska* Beginning from a similar strong base, Alaska is in
15 a good position to build on our strengths of seniority and strong committee
16 chairmanships for many years to come Strong and growing stronger,
17 seniority to protect Alaska!

18
19 (emphasis in original) The ad ended with the statements, "Please support Alaska and
20 Senator Lisa Murkowski Looking Forward for Our Future - Strong Leadership to Build
21 On "

22 The third newspaper ad, run on October 16, 2004 (the "October 16th ad"), pictured
23 Senators Murkowski and Stevens and included the same comparison of their backgrounds
24 as seen in the September 6th ad See Attachment 2, pp 4-5 The ad then stated that

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1 Alaska seems

2 to benefit from good things that happen - - even if it's not always apparent
3 at first For example, as far as Alaska's economy and seniority in
4 Congress are concerned, history has shown that there are clear benefits
5 from appointing a young, smart, experienced, former State House Majority
6 Leader to the U S Senate

7
8 The ad finally asked readers, "Setting aside our differences and doing what's best for
9 Alaska, please vote November 2 "

10 The television advertisement, a copy of which complainant submitted with her
11 complaint,⁴ featured former Governor Knowles, Senator Murkowski's opponent in the
12 general election It opened by showing a picture of Governor Knowles, which remained
13 on the screen as the commercial discussed Governor Knowles' past participation in the
14 "Pew Commission "⁵ The ad described the Pew Commission as a group dominated by
15 "outside liberals," "bureaucrats" and "extreme environmental groups" that targeted
16 certain fishing areas in Alaska The ad further stated that Governor Knowles endorsed
17 the Pew Commission recommendations and showed a man, described as a sport-fishing
18 captain, saying that he did not know why Governor Knowles would agree to the
19 recommendations The ad ended by stating, "If you want to find out more, call Tony
20 Knowles and ask what he was thinking when he endorsed the Pew Commission
21 recommendations " The screen read, "To find out more, call Tony Knowles and ask

⁴ A videotape copy of the television ad submitted by the complainant can be made available for the Commission's review

⁵ The "Pew Commission" is formally titled the "Pew Oceans Commission," a self-described "bipartisan, independent group of American leaders" charged with charting "a new course for the nation's ocean policy " It was funded by the Pew Charitable Trusts The Pew Commission identified policies and practices necessary to restore and protect living marine resources throughout the United States and recommended reforms to national ocean policy See Attachment 4, Executive Summary, pp xi-x Members included current and former political officials, such as Leon Panetta and Governor George Pataki, as well as scientists and leaders from the worlds of fishing, conservation, education, business, and philanthropy See Attachment 4 Its final report with recommendations was issued in May 2003

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1 about his Pew Commission recommendations " The television ad in question did not
2 picture or discuss Senator Murkowski

3 **B. Analysis Of BA's Status And Its Advertisements**

4 Based on the complaint, responses, and publicly available information, we
5 recommend that the Commission find reason to believe that BA was a political
6 committee under the Act Accordingly, we have analyzed the advertisements in question
7 as if BA was a political committee In the alternative, in the event the Commission
8 determines that BA is not a political committee, BA's disbursements for the
9 advertisements may have constituted prohibited corporate expenditures by BA
10 Therefore, we have also analyzed the advertisements as if they were funded by corporate
11 expenditures

12 **1. Political Committee Status**

13 The complaint alleged that BA was a political committee required to file reports
14 with the Commission, but that it has not filed any BA did not respond to that allegation,
15 other than to state, without explanation, that it was a 501(c)(6) organization and that the
16 only form it was required to file with the Commission was a Form 5, which non-political
17 committees use to report independent expenditures

18 The fact that BA filed with the IRS as a 501(c)(6) organization does not negate
19 the possibility that it is a political committee The Act defines a "political committee" as
20 any committee, club, association or other group of persons that receives contributions or
21 makes expenditures for the purpose of influencing a federal election that aggregate in
22 excess of \$1,000 per calendar year 2 U S C § 431(4) Therefore, if the disbursements

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1 made by BA to fund the ads at issue were expenditures that exceeded \$1,000, then BA
2 may have triggered political committee status ⁶

3 It appears that BA placed at least three newspaper advertisements expressly
4 advocating the election of Senator Murkowski during the period preceding the primary
5 and general election in which she was running for re-election, and at least one television
6 ad regarding Governor Knowles during the time he was running for election to the
7 Senate BA states in its response that its "expenditures" for these ads totaled
8 approximately \$8,300 Under the Act, an expenditure is any purchase, payment,
9 distribution, or anything of value made by any person for the purpose of influencing any
10 federal election 2 U S C § 431(9)(A) ⁷ Even under the most stringent application of the
11 term expenditure (i e , express advocacy), it appears that the costs incurred to produce
12 and purchase the ads constituted expenditures that exceeded the \$1,000 statutory
13 threshold for political committee status

14 a The Newspaper Ads Contain Express Advocacy
15

16 The three newspaper ads contain express advocacy under 11 C F R § 100 22(a)
17 and (b) "Expressly advocate" means any communication that either (a) uses certain
18 phrases such as "vote for," "re-elect," "cast your ballot for," "support," "Smith for
19 Congress," "Bill McKay in '94," "vote Pro-Life" accompanied by a list of clearly
20 identified candidates described as Pro-Life, "defeat," or "reject," or communications or
21 words which in context can have no other reasonable meaning than to urge the election or
22 defeat of a clearly identified candidate or (b) when taken as a whole and with limited

⁶ We have no information about the source(s) of BA's funding

⁷ It is unclear from the response whether BA used the term "expenditures" as a term of art conceding that it spent nearly \$8,300 for the purpose of influencing an election for federal office, or if it simply meant that its disbursements totaled approximately \$8,300

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1 reference to external events, could only be interpreted by a reasonable person as
2 containing advocacy of the election or defeat of a clearly identified federal candidate
3 because (1) the electoral portion of the communication is unmistakable, unambiguous and
4 suggestive of only one meaning and (2) reasonable minds could not differ as to whether it
5 encourages actions to elect or defeat a clearly identified candidate or encourages some
6 other kind of action 11 C F R § 100 22(a)-(b)

7 The August 21st and September 6th newspaper ads explicitly asked the readers to
8 "support Senator Lisa Murkowski " Because the ads used a phrase that is specifically
9 listed in the regulation as an example of express advocacy, any money spent on these ads
10 should be considered expenditures under the Act

11 The October 16th ad contains express advocacy under both sections 100 22(a) and
12 (b) The ad contained a picture of Senators Stevens and Murkowski, compared Senator
13 Stevens' and Murkowski's background, and explained that a background such as Senator
14 Stevens' had provided "clear benefits" to Alaska in the past Furthermore, the ad
15 exhorted voters to take a specific action, to vote on November 2, 2004

16 The ad contains express advocacy under section 100 22(a) because it provides "in
17 effect" an explicit directive to vote for a candidate whose background is identified as
18 being positive for Alaska In *FEC v Massachusetts Citizens for Life ("MCFL")*, 479
19 U S 238, 249 (1986), the Supreme Court held that a newsletter that set out the positions
20 of the candidates and then urged voters to "VOTE PRO-LIFE!" contained express
21 advocacy The Court reasoned that the newsletter "provide[d] in effect an explicit
22 directive" to vote for candidates favored by MCFL because it not only urged voters to
23 vote for "pro-life" candidates, but also "identifie[d] and provide[d] photographs of

1 specific candidates fitting that description " *Id* Here, BA's ad discusses Senator
2 Murkowski's background as consistent with BA's opinion of an appropriate candidate for
3 federal office, and suggested that readers vote on November 2nd As in *MCFL*, the ad's
4 message is "marginally less direct than vote for" Senator Murkowski, but that "does not
5 change its essential nature " *MCFL*, 479 U S at 249

6 The October 16th ad also contains express advocacy under section 100 22(b)
7 because reasonable minds could not differ in interpreting the message of the ad if you
8 like what Senator Stevens has done for Alaska, Senator Murkowski has a similar
9 background and will provide similar benefits to Alaska if elected, and exhorted the
10 readers to vote on November 2, 2004 Senator Stevens was not on any ballot on
11 November 2, 2004 By explicitly asking the readers to "vote on November 2," the only
12 possible interpretation of that ad would be to vote for Senator Murkowski on that day

13 b BA Appears To Have Expended More Than \$1,000 And Would
14 Qualify As A Political Committee Under the Act
15

16 BA made certain disbursements for the advertisements that constitute
17 expenditures Neither BA nor the complainant provided information regarding the cost
18 of the newspaper ads However, the Anchorage Daily News' media kit suggests that the
19 aggregate cost for all three ads likely exceeded \$1,000 ⁸ Therefore, it appears likely that
20 BA made more than \$1,000 in expenditures and, thus, was a political committee required

21

⁸ The Anchorage Daily News' publicly available media kit lists only some ad costs, including cost per column inch ranging from \$71.05 for retail sales, to \$47.25 for non-profits and \$41.57 for charity organizations, and \$590 for a full-page color ad See Attachment 5 At this time, it is known that at least three full-page newspaper ads were paid for by BA, but it is not known if they were color or black and white Assuming BA was charged the listed price for non-profits of \$47.25 per column inch, approximately 22 column inches worth of ad space would exceed the \$1,000 threshold (\$47.25 x 22 = \$1,039.50) A full-page ad is 126 column inches (6 columns wide and 21 inches high), therefore one full-page newspaper ad alone cost more than \$1,000

1 to file reports with the Commission⁹

2 c As a Political Committee, BA Was Required To Register
3 And File Disclosure Reports With The Commission
4

5 If BA was a political committee, then it was subject to a number of registration
6 and reporting requirements under the Act, including filing a statement of organization
7 within ten (10) days of making expenditures in excess of \$1,000 per year, filing reports of
8 all receipts, disbursements and expenditures, and filing quarterly reports See, e.g.,
9 2 U S C §§ 431(4)(A), 433(a), 434 (a)(1), 434(a)(4)(A)(i), and 434(b)¹⁰ BA has not
10 filed a statement of organization or any other reports with the Commission Therefore,
11 we recommend that the Commission find that there is reason to believe BA violated
12 2 U S C §§ 433(a), 434(a)(1), 434(a)(4), and 434(b)

13 2. Corporate Status

14 In the alternative, if BA is not a political committee, BA was still subject to
15 certain requirements and prohibitions under the Act as a corporate entity It did not

⁹ To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can be political committees See, e.g., *Buckley v Valeo*, 424 U S 1, 79 (1976), *FEC v Massachusetts Right to Life*, 479 U S 238, 262 (1986) BA acknowledges that it paid for the newspaper and television ads at issue here – ads that constitute campaign activity BA's response states that its purpose was to "encourag[e] effective government in Alaska and our local communities" and to share information with those who share their view of "trustworthy leadership" However, BA's president, Devery Prince, apparently believes that, while BA was initially set up to "effectuate change at a local level [I]t has since morphed into something beyond the original intended scope" (See Attachment 3, Sean Cockerham, "Ad Bashes Knowles Link to Pew Report," Anchorage Daily News, Sept. 9, 2004) Mr Prince apparently resigned his position because of that shift and, at the time the newspaper and television ads were run, stated that he had "no knowledge that the group had decided to become involved in the US Senate race" and "it did not make sense for [him] to remain involved when the group has moved in a significantly different direction without having solicited my input or support" *Id.* The newspaper claimed to be quoting emails and a copy of Mr Prince's resignation letter, as supplied by Mr Prince Finally, BA does not claim, nor does review of public records support an inference, that BA engaged in any activity other than payment of the newspaper and television ads at issue here Therefore, while it appears that BA meets the statutory requirements for being a political committee, it also appears that its major, if not only, purpose was to pay for the ads regarding the Senate election

¹⁰ BA also would have been subject to the contribution limitations and source prohibitions of the Act, but there is no allegation or information regarding BA's funding 2 U S C § 441a

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1 comply with these provisions, and therefore we recommend that, in the alternative, the
2 Commission find reason to believe BA violated those provisions of the Act

3 a BA Made Prohibited Corporate Independent
4 Expenditures For The Newspaper Advertisements
5

6 If BA is not a political committee, BA still may have violated the Act because it
7 made prohibited corporate independent expenditures by financing communications that
8 expressly advocate the election of a federal candidate in the newspaper ads 2 U S C
9 § 441b(a), *see supra* pp 9-11 ¹¹

10 BA is a nonprofit organization, incorporated and registered with the State of
11 Alaska and the IRS The Act prohibits a corporate entity from making any independent
12 expenditures in connection with a federal election 2 U S C § 441b(a) An independent
13 expenditure is any expenditure that expressly advocates the election or defeat of a clearly
14 identified candidate and is not made in concert with a candidate, a political party
15 committee, or their respective agents 2 U S C § 431(17) Although certain nonprofit
16 corporations may make independent expenditures pursuant to 11 C F R § 114 10, BA has
17 not claimed to be such a corporation ¹² Therefore, we recommend in the alternative that
18 the Commission find reason to believe BA violated 2 U S C § 441b

¹¹ There have been no allegations of and we have no information to suggest any coordination between BA and any candidate or any other political committee

¹² A qualified nonprofit corporation can make independent expenditures and electorally communications without violating the prohibitions against corporate expenditures, but must report any such expenditure in excess of \$250 or \$10,000, respectively, and certify that it is eligible for an exemption from the prohibitions against corporate expenditures 11 C F R §§ 114 10(d)-(e) BA has not made any such reports or certifications to the Commission Without additional factual information from BA, even if BA asserted this as a defense, it is unclear whether BA could be considered a qualified nonprofit corporation because it is unknown whether BA was established by a "business corporation" or accepted "business corporate" money, was formed for the express purpose of promoting political ideas without engaging in business activities, and/or that it had no shareholders or others with claims on its assets 11 C F R § 114 10

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b **BA Made Prohibited Corporate Electioneering
Communications With the Television Ad**

In addition, a corporation is prohibited from making a disbursement for an electioneering communication, unless the communication is made to its stockholders and executive or administrative personnel and families 2 U S C §§ 441b(a), (b)(2) An electioneering communication is any broadcast communication which (1) refers to a clearly identified candidate for federal office, (2) is made within 60 days of a general election or 30 days before a primary election, and (3) is targeted to the relevant electorate, meaning it is capable of being received by 50,000 or more individuals in the state the candidate seeks to represent in the Senate 2 U S C §§ 434(f)(3)(A), (C)

The television ad issued by BA referred to a clearly identified federal candidate because it presented a picture of Governor Tony Knowles on the screen throughout the ad Evidence submitted by the complainant also shows that the ad also may have been aired after September 3, 2004, the start of the 60-day pre-election electioneering communication period ¹³ BA acknowledged that it aired the ad from August 31, 2004 through and including September 3, 2004, and therefore the ad was aired for at least one day of the electioneering communication period ¹⁴ The complainant also claimed that the television ad was run on more than one television station, press reports indicated that at least two ads were run on at least four television stations See Attachment 3 ("Democrats File FEC Complaint Over Anti-Knowles Ad," Associated Press, Sept 4, 2004) According to the Federal Communications Commission database, three television stations

¹³ The documents provided by the complainant suggest that BA purchased time to air the ad through September 5, 2004

¹⁴ BA's response to the complaint claims that it aired the television ad outside the 60-day pre-election electioneering communication period

1 on which the ad reportedly aired are capable of being received by 50,000 or more
2 individuals Based on the above we recommend the Commission find reason to believe
3 that BA violated 2 U S C § 441b(b)(2)

4 c Reporting Violations

5 In addition to making allegations about electioneering communications, the
6 gravamen of the complaint was BA's alleged failure to file proper reports with the
7 Commission and alleged electioneering communications Furthermore, BA explicitly
8 noted in its response that it would file with the Commission a Form 5 disclosing its
9 expenditures Therefore, in addition, we have also analyzed BA's failure to file proper
10 reports with the Commission ¹⁵

11 The Act requires entities or persons other than political committees that make
12 independent expenditures aggregating in excess of \$250 during a calendar year to report
13 those independent expenditures by filing Form 5 with the Commission 2 U S C
14 § 434(c), 11 C F R § 109 10(b) Thus, under this alternative theory, if the aggregate cost
15 of the newspaper ads exceeded \$250, BA was required to disclose those independent
16 expenditures by filing a Form 5 with the Commission ¹⁶ While it is unknown at this time
17 exactly how much BA spent to create and run the newspaper ads, publicly available
18 information, as discussed *supra* p 11, n 8, leads us to believe that the aggregate cost

¹⁵ Although we have not generally raised disclosure issues in other matters where, as an alternative to political committees, we have recommended the Commission find reason to believe based on a 441b theory, we briefly address the reporting issue here because it was explicitly raised in the complaint and in BA's response

¹⁶ BA states that it intended to file a Form 5 with the Commission, but to date, has failed to do so While this admission is not completely dispositive of this issue, considering that we believe BA may be a political committee and therefore would not have been required to file a Form 5, it is indicative of the fact that BA knew it was required to file something with the Commission and still failed to fulfill its obligation

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1 would have exceeded \$250 ¹⁷ Therefore, we also recommend that the Commission find
2 reason to believe that BA violated 2 U S C § 434(c)

3 Finally, the Act requires that any entity making a disbursement for the costs of
4 producing and airing an electioneering communication in aggregate amount in excess of
5 \$10,000 during any calendar year shall file within 24 hours a statement with the
6 Commission 2 U S C § 434(f) Therefore, if BA aired its television ad on September 3,
7 2004, or later and the costs exceeded \$10,000, as alleged by the complainant, then BA
8 was required to file a report with the Commission Although the complaint merely
9 speculated regarding the total amount BA spent on the television ad, and the respondents
10 denied spending more than \$10,000 on the television ad, ¹⁸ there is (according to press
11 reports, see Attachment 3) the possibility that a second television ad was aired by BA,
12 and the cost to produce and air that second ad within 60 days of the November election
13 (if it was so aired) is unknown at this time If the second ad constituted an electioneering
14 communication, BA's aggregate disbursements for electioneering communications could
15 easily have exceeded \$10,000 BA, however, has not filed an electioneering report with
16 the Commission Should the Commission find reason to believe under either a political
17 committee theory or, in the alternative, a corporate expenditure and electioneering
18 communication theory, we would seek information on the costs of the ad or ads In order

¹⁷ Furthermore, the October 16th ad was run within twenty days of the general election Therefore, if BA expended more than \$1,000 on that ad, regardless of whether BA was a political committee, BA was required to file a report with the Commission within twenty-four hours of running the ad 2 U S C § 434(g) It did not do so If, in the course of investigation, we determine that the cost of the October 16th ad exceeded \$1,000, we will make an appropriate recommendation to the Commission

¹⁸ Respondents provided somewhat inconsistent information regarding the costs of the ads BA stated that its "expenditures" were \$8,349.95, but does not explain how the money was spent Mr Frost stated that JFF purchased \$6,658 of advertising buys on behalf of BA and also stated that he, personally, paid for production of the ad, which cost in excess of \$2,400

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1 to provide BA notice of its potential liability if it is found to have violated the
2 electioneering communication disclosure requirement, we recommend the Commission
3 find reason to believe BA violated 2 U S C § 434(f)

4 C. Disclaimers

5 The Act requires that political committees and persons making certain
6 communications provide a disclaimer as specified in the statute and regulations 2 U S C
7 § 441d If a political committee, BA was required to place a disclaimer pursuant to
8 section 441d on the newspaper and television ads, if not a political committee, BA was
9 required to place a disclaimer pursuant to section 441d on the express advocacy
10 newspaper ads and any electioneering communications BA placed disclaimers on its
11 advertisements, however, they did not fully comply with the requirements set forth in the
12 Act and the corresponding regulations

13 The newspaper ads in our possession contain disclaimers on the bottom of the ad
14 that provide most of the information required by the Act, including the name of the entity
15 paying for the ad, the address of the entity paying for the ad, and a statement that the ad
16 was not paid for by any candidate 2 U S C § 441d(a)(3), 11 C F R §§ 110 11(b)(3), (c)
17 However, the newspaper disclaimers failed to state that they were not paid for by any
18 candidate's political committee and were not contained in a box, as required by the Act
19 2 U S C §§ 441d(a)(3), (c)(2) Furthermore, the font used arguably is not "clearly
20 readable" by the recipient of the communication, as it is written in extremely small font
21 on the bottom of the full-page ad 2 U S C § 441d(c)(1), 11 C F R § 110 11(c)(2)(i)

22 The television ad contained a voiceover stating that BA paid for the ad and that
23 the ad was not paid for by any candidate It also contained written text on the screen that

1 stated BA paid for the ad, BA's address, and a statement that the ad was not paid for by
2 any candidate. The ad did not, however, contain the audio statement specified in the Act,
3 that "_____ is responsible for the content of this advertising." 2 U S C § 441d(d)(2),
4 11 C F R § 110.11(c)(4)(i), (n).

5 Because BA did not follow the specific disclaimer requirements as explicitly set
6 forth in the Act and regulations, we recommend that the Commission find reason to
7 believe that BA violated 2 U S C §§ 441d(a)(3) and 441(d)(2).

8 **D. Jack Frost & Friends and Jack Frost, Individually**

9 The complaint alleged that Jack Frost, president of JFF, "aided Business Alaska's
10 political advertising" and that Mr. Frost's "voice [wa]s used in a Business Alaska
11 advertisement." No violation of the Act is specifically alleged in the complaint. Based
12 on the information provided by JFF in response, it appears that JFF was an advertising
13 and public relations firm and that JFF's negotiation of the airtime purchase on behalf of
14 its client, BA, does not violate the Act. Accordingly, we recommend that the
15 Commission find no reason to believe that JFF violated the Act.

16 With respect to himself, Mr. Frost stated that he personally paid \$2,400 for
17 production of "the ads," although he does not explain to which ad or ads he is referring.
18 However, BA's response indicated that it produced and directed its own television ad.
19 Furthermore, if Mr. Frost paid for the ads, it is unknown whether Mr. Frost paid for them
20 personally or through his business, JFF, or any other role Mr. Frost might have had in
21 creating or producing the ads. Considering the contradictory statements, the indication
22 that Mr. Frost paid for the production of multiple ads, and lack of any other clarifying
23 information regarding Mr. Frost's role in BA or its advertising, it is difficult for us to

10044261656

1 make a recommendation at this time regarding Mr Frost Accordingly, we recommend
2 that the Commission take no action at this time with respect to Jack Frost, individually

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15 **IV. RECOMMENDATIONS**

16 1 Find reason to believe that Business Alaska, Inc violated 2 U S C §§ 433,
17 434(a), and 434(b)

18

19 2 In the alternative, find reason to believe that Business Alaska, Inc violated
20 2 U S C §§ 441b, 434(c), and 434(f)

21

22 3 Find reason to believe that Business Alaska, Inc violated 2 U S C § 441d

23

24 4 Find no reason to believe that Jack Frost & Friends violated the Act and
25 close the file as it pertains to this respondent

26

27 5 Take no action at this time regarding Jack Frost

28

29 6 Approve the attached Factual and Legal Analyses

30


31 7

10044261657


8 Approve the appropriate letters

1/20/06
Date


Lawrence H. Norton
General Counsel


Rhonda Voedingh
Associate General Counsel
for Enforcement


Sidney Roake
Assistant General Counsel


Alexandra Dumas
Attorney

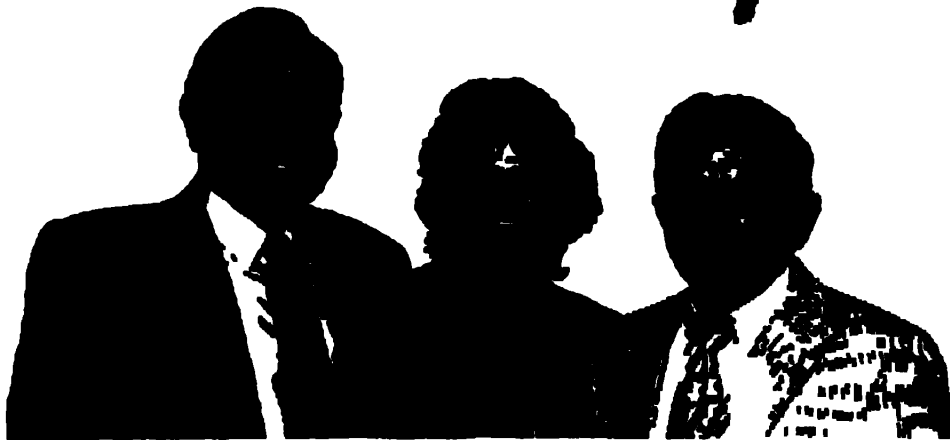
Attachments

- 1 BA Application for Employer Identification Number
- 2 BA newspaper ads
- 3 Relevant newspaper articles
- 4 Pew Oceans Commission Executive Summary
- 5 Pages from Anchorage Daily News Media Kit

10044261659

United States Congress
Committee Chairmanships for Alaska

Our Strength is Our Seniority



Representative Don Young

Position Chair
U.S. House
Transportation
Committee

Seniority #1 among 75
U.S. House
Transportation
Committee
Members

Senator Lisa Murkowski

Position Chair
U.S. Senate
Water and Power
Sub-Committee

Seniority #5 among 25
U.S. Senate
Energy and
Natural Resources
Committee
Members

Senator Ted Stevens

Position Chair
U.S. Senate
Appropriations
Committee

Seniority #1 among 45
U.S. Senate
Appropriations
Committee
Members

U.S. Senator Lisa Murkowski is advancing rapidly in seniority and influence for Alaska in the U.S. Senate. Because she assumed office in December, 2002, Senator Lisa Murkowski outranks all U.S. Senators elected that year. In addition, due to retirements and committee re-assignments, Senator Lisa Murkowski will rank 5th in seniority out of the twenty-five members of the U.S. Senate Committee on Energy and Natural Resources. And the chairmanship of that full committee is right in her future.

This is great news for Alaska.

Continuing our strong
important what is
jobs and home values.

Strong and secure.

Strong Leadership to Build On



Senator Lisa Murkowski

- **Position:**
U.S. Senator for Alaska
- **Age When Took Office:**



Senator Ted Stevens

- **Position:**
U.S. Senator for Alaska
- **Age When Took Office:**

10044261660

45

- **Initial Selection:**
Appointment
- **Political Party:**
Republican
- **Prior Elected Experience:**
Alaska State House of Representatives
- **Alaska Leadership Position:**
House Majority Leader

45

- **Initial Selection:**
Appointment
- **Political Party:**
Republican
- **Prior Elected Experience:**
Alaska State House of Representatives
- **Alaska Leadership Position:**
House Majority Leader

• **Private Profession:**

Looking Forward for Our Future - Strong Leadership to Build On

Significant Similarities for Alaska



Senator Lisa Murkowski

• **Position:**
U.S. Senator for Alaska



Senator Ted Stevens

• **Position:**
U.S. Senator for Alaska

10044261662

- **Initial Selection:**
Appointment
- **Political Party:**
Republican
- **Prior Elected Experience:**
Alaska State House of Representatives
- **Alaska Leadership Position:**
House Majority Leader

- **Initial Selection:**
Appointment
- **Political Party:**
Republican
- **Prior Elected Experience:**
Alaska State House of Representatives
- **Alaska Leadership Position:**
House Majority Leader

Looking Forward for Our Future - Strong Leadership to Build On

- May
- April
- March
- February

Democrats file FEC complaint over anti-Knowles ad

September 4, 2004

The Associated Press

ANCHORAGE—The state Democratic Party has filed complaints with the Internal Revenue Service and the Federal Elections Commission against a business group running attack ads against U S Senate candidate Tony Knowles

Business Alaska Inc has been running 30-second spots on at least four Anchorage stations since Tuesday

The commercials attack Knowles for his support of the Pew Oceans Commission and its work on preserving the ocean environment The ads do not specifically support any of Knowles' foes in the Senate race

Knowles, a Democrat, was one of two governors to serve on the commission, which issued its final report in May 2003 The other was Gov George Pataki of New York, a Republican

One commercial described the commission as a group "dominated by Outside liberals who tried to give control of fisheries to bureaucrats and extreme environmental groups and who targeted existing fishing areas for closure, and Tony Knowles endorsed it "

Knowles campaign spokesman Matt McKenna told the Anchorage Daily News that Knowles "went to the bipartisan Pew Commission to represent Alaska's interest and to preserve the fishing industry in Alaska To do that he had to stand up to members of both parties on the commission, and that's what he'll do in the Senate "

The voice in the ad belongs to Anchorage radio host and advertising agency owner Jack Frost, who said Thursday that he had no idea how the commercials were financed or filmed Frost said he wrote his part of the script based on material provided to him by Tom McGrath, owner of the Anchorage electronics supply company Frigid North

McGrath's name appears on the commercials as treasurer of Business Alaska Frost also bought the time on Anchorage television stations He said the basic commercial has at least two variations One features a man identified as "sportfishing captain" Ezra Campbell, who angrily says, "We don't have a clue why Gov Tony Knowles would even want to be remotely involved in something so ludicrous "

The other features Clem Tillion of Hahbut Cove, a former state senator and outspoken opponent of the commission's recommendations for Alaska

The pair of complaints, brought by Democratic Party executive director Bridget Gallagher, accused Business Alaska, McGrath and Frost of violating federal election campaign law and the Internal Revenue Code by failing to register as a so-called section 527 organization Section 527 authorizes nonprofit corporations to participate in political activities, such as the groups actively involved in the

10044261664

presidential race

The complaints also said Business Alaska failed to register with the Federal Election Commission or the Alaska Public Offices Commission and failed to abide by federal disclaimer requirements

Tillion said he appeared in the ad at the request of John Trevor McCabe, an Anchorage lawyer and former executive director of the At-Sea Processors Association, the group that represents factory trawlers. Tillion said he didn't know anything about Business Alaska and didn't really care.

While he thought the Pew Commission was correct in its assessments of the damage of some of the Atlantic fisheries, where Tillion's roots are, its recommendations would reduce the control that Alaskans have over the North Pacific, which have been well managed, he said.

Vahd XHTML | Vahd CSS

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Alaska's U.S. Senate Race

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Friday, February 25th, 2005

SPECIAL SECTION · U S Senate Race 2004

Ad bashes Knowles link to Pew report**BIPARTISAN: Democrat served with Republicans on the committee under attack.**

By SEAN COCKERHAM

Anchorage Daily News

(Published September 9, 2004)

WASHINGTON -- U S Sen Lisa Murkowski unveiled a new commercial Wednesday attacking her Democratic opponent, former Gov Tony Knowles, for his role in a commission to protect the oceans

Murkowski, a Republican, said at a press conference here that the recommendations of the nonprofit Pew Oceans Commission would hobble Alaska's fisheries. Murkowski is hammering that theme with radio attack ads set to air in Alaska this week.

"We are bringing this out as a campaign issue," Murkowski told reporters.

Just last week, the same theme was sounded in a series of commercials by a shadowy political group based in Anchorage, Business Alaska. The ads, put together with the assistance of the former director of the organization that represents the Alaska factory trawler fleet, criticized Knowles for supporting the Pew Commission.

Despite the one-two-punch timing of Murkowski's ads, which come right on top of those of the business group, the Murkowski campaign said it hasn't consulted with Business Alaska on the ads. It would be illegal for Business Alaska to coordinate with the Murkowski effort.

Murkowski told reporters it was fishermen's objections to the Pew report that prompted her offensive. The timing is related in part to the end of the fishing season in Alaska, the senator said.

"The fishing season is drawing down in Alaska, and the fishermen are coming back," Murkowski said. "And they will actually be able to hear this on their radios."

The Murkowski ad slams the Pew recommendations as a boost in federal control over fisheries. The Pew report suggests scaling back the power of the eight existing regional councils that regulate ocean commercial fishing in favor of a new federal agency and new conservation-minded regional councils. It also said Congress should create a national marine reserves system where fishing and other human activities would be banned. The report lists devastation to U S fisheries and ocean habitat from pollution, development and overfishing.

But Murkowski said Alaska's fisheries are well managed under the current federal management scheme and in good shape.

Scientists, fishermen and other politicians were among those who served with Knowles on the 18-member Pew panel. The bipartisan group included Republicans like New York Gov George Pataki, a star of the recent Republican convention. The Knowles campaign said the former Alaska governor participated to argue with partisans of all stripes for Alaska's interests. Knowles fought for measures included in the report like a call for a moratorium on expanding fish farms in the United States, his campaign said.

"I think Alaska was better served by having Knowles on the commission," said his spokesman, Matt

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ATTACHMENT 3
Page 3 of 4

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McKenna

Knowles fired his own shot Wednesday, issuing a statement condemning a federal effort to allow more fish farms and claiming that Murkowski ought to be doing more to scuttle the idea. The Knowles camp also said their candidate -- who endorsed the Pew report -- advocated ocean habitat protections that would help fisheries and lead to bigger seafood harvests.

Murkowski's commercial extends the life of the Pew report as an issue in the upcoming election after the Business Alaska ad left the airwaves.

The state Democratic Party has filed complaints against Business Alaska with the Internal Revenue Service and the Federal Election Commission, alleging that the nonprofit corporation violated federal law by failing to register as a political organization, by failing to use disclaimers required by law with its ads and by running political advertisements too close to the Nov. 2 election.

The treasurer for Business Alaska, Tom McGrath, has refused to discuss the organization. Anchorage insurance agent Devery Prince, listed in state corporation records as the organization's president, said in an e-mail to the Daily News that he had been replaced in that office in May or June and that he resigned from the group altogether last weekend. He also resigned from a similar group, Forward Alaska Inc., he said.

Prince said in his e-mail, which contained a copy of his resignation letter, that Business Alaska was originally set up in March "to effectuate change at a local level (i.e. Assembly and School Board races). It has since morphed into something beyond the original intended scope."

He said he had "no knowledge that the group had decided to become involved in the US Senate race, let alone running full-page newspaper ads and radio spots."

Prince said in his resignation that he wasn't upset with the group over its change in direction. "However, it does not make sense for me to remain involved when the group has moved in a significantly different direction without having solicited my input or support."

Daily News reporter Richard Mauer contributed to this story. Daily News reporter Sean Cockerham can be reached at scockerham@adn.com or 1-202-383-0007.

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MEMBERS OF THE PEW OCEANS COMMISSION

Kenai Fjords National Park, Alaska
Daily Arctic/Pew Oceans Commission



The Honorable Leon E. Panetta, Chair

He is director of the California State University Panetta Institute for Public Policy. He served in Congress for eight terms. He chaired the House Budget Committee and served as White House chief of staff.

John H. Adams

He is the founder and president of the Natural Resources Defense Council—one of the nation's leading environmental organizations. In 1998, he was named one of Audubon's 100 Champions of Conservation.



The Honorable Eileen Claussen

She is president of the Pew Center on Global Climate Change. She is a former assistant secretary of state for oceans, environment, and science.

The Honorable Carletta Leon Guerrero

She is a former member of the Guam Senate where she chaired committees with jurisdiction over transportation, telecommunications, and Micronesian affairs. She is currently co-director of the Ayuda Foundation, a nonprofit health care organization in Guam.



The Honorable Mike Hayden

He is the secretary of the Kansas Department of Wildlife and Parks. The former governor of Kansas served as president and CEO of the American Sportfishing Association, a recreational fishing group.

Geoffrey Heal, Ph.D.

He is the Garrett Professor of Public Policy and Corporate Responsibility and professor of economics and finance at the Graduate School of Business at Columbia University. One of his major research interests is the interaction of human societies and their natural resources.



Charles F. Kennel, Ph.D.

He is director of the Scripps Institution for Oceanography and the author of more than 250 publications in plasma physics, planetary science, and astrophysics. He has been both a Fulbright and Guggenheim Scholar.

The Honorable Tony Knowles

He recently completed his second term as governor of Alaska. He was the mayor of Anchorage and served on the North Pacific Fishery Management Council, where he was instrumental in efforts to reduce bycatch.



Jane Lubchenco, Ph.D.

She is an Oregon State University professor of marine biology, a MacArthur Fellow, and past president of both the American Association for the Advancement of Science and the Ecological Society of America. She is president-elect of the International Council for Science, and recipient of the 2002 Heinz Award for the Environment.



Julie Packard

She is the founder and executive director of the Monterey Bay Aquarium and vice chair of the David and Lucile Packard Foundation. She is the 1998 recipient of the Audubon Medal for Conservation.

The Honorable Pietro Parmeno

He is a commercial fisherman and owner of the *Anne B*. He is the president of the Pacific Coast Federation of Fishermen's Associations and an elected member of the San Mateo County Harbor Commission.



The Honorable George E. Pataki

He is currently serving his second term as governor of New York. After graduating from Columbia Law School, he served ten years in the state legislature and was mayor of the city of Peekskill, his hometown.

The Honorable Joseph P. Riley, Jr.

He is serving his seventh term as mayor of Charleston, South Carolina. He has served as the president of the U.S. Conference of Mayors and has received many awards, including the Outstanding Mayors Award from the National Urban Coalition.



David Rockefeller, Jr.

He is director and former chair of Rockefeller Co., Inc., and is an active participant in the nonprofit fields of art, philanthropy, and the environment. He is a vice chair of the National Park Foundation and trustee of the Rockefeller Brothers Fund.

Vice Admiral Roger T. Rife, Jr., U.S. Coast Guard (Retired)

He is the president and CEO of The Ocean Conservancy. While in the U.S. Coast Guard, he led offices responsible for marine conservation in Alaska and the Southeast U.S.



Kathryn D. Sullivan, Ph.D.

She is the president and CEO of COSI, a hands-on science center in Columbus, Ohio. As a NASA astronaut, she was the first U.S. woman to walk in space. She served as NOAA's chief scientist from 1992 to 1996. She has a Ph.D. in geology.

Marilyn Ware

She is the chairman of the board of American Water Works Company, the nation's largest private drinking water utility. She is a former newspaper editor and publisher, and currently serves on the board of the American Enterprise Institute.



Patton (Pat) D. White

He is a commercial fisherman and CEO of the Maine Lobstermen's Association. He is a member of the Atlantic States Marine Fisheries Commission, and serves on the editorial board of *National Fisherman*.

10044261670

America's Living Oceans

CHARTING A COURSE FOR SEA CHANGE

**A Report to the Nation
Recommendations for a
New Ocean Policy
May 2003**



Leon E. Panetta, Chair

ATTACHMENT 4
Page 2 of 11

Executive Summary

Boscoro, Channel Islands National Marine Sanctuary, California
Richard Hermann

America's oceans are in crisis and the stakes could not be higher. More than half the U.S. population lives in coastal counties. The resident population in this area is expected to increase by 25 million people by 2015. More than 180 million people visit the shore for recreation every year.

Though a price tag has never been assigned to our coastal economy, it is clear that it contributes significantly to the nation's overall economic activity. Tens of thousands of jobs in fishing, recreation, and tourism depend on healthy, functioning coastal ecosystems. Now, thousands of jobs and billions of dollars of investment have either been lost or are jeopardized by collapsing fisheries. Pollution and sprawl threaten ocean-related tourism and recreation, far and away the largest compo-

nent of the coastal economy.

But more than jobs are at stake. All Americans depend on the oceans and affect the oceans, regardless of where they live. Ocean currents circulate the energy and water that regulate the Earth's climate and weather and, thus, affect every aspect of the human experience. Our very dependence on and use of ocean

resources are exposing limits in natural systems once viewed as too vast and inexhaustible to be harmed by human activity. Without reform, our daily actions will increasingly jeopardize a valuable natural resource and an invaluable aspect of our national heritage.

In the midst of crisis, there are expressions of hope and signs of success. Striped bass, severely depleted along our Atlantic shores, made a striking comeback when given a chance. North Atlantic swordfish recently did the same in response to lower catch limits and closed nursery areas. Seabirds, kelp beds, and fish communities returned to the coastal waters off Los Angeles after waste discharges were reduced. Proven, workable solutions to the crisis in our oceans exist but such successes will remain the exception rather than the rule until we chart a new course for ocean management.

THE EVIDENCE

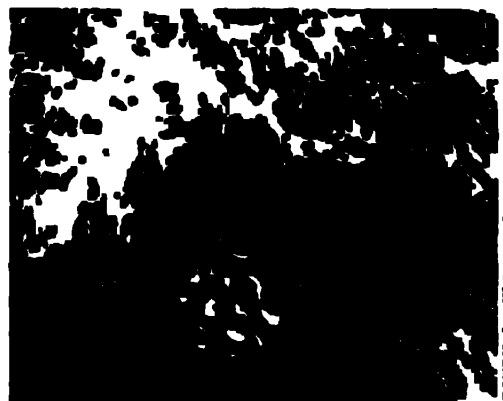
The evidence that our oceans face a greater array of problems than ever before in our nation's history surrounds us. Marine life and vital coastal habitats are straining under the increasing pressure of our use. We have reached a crossroads where the cumulative effect of what we take from, and put into, the ocean substantially reduces the ability of marine ecosystems to produce the economic and ecological goods and services that we desire and need. What we once considered inexhaustible and resilient is, in fact, finite and fragile.

The crisis confronting our oceans has many dimensions.



Fishing figures prominently in the economies of many coastal communities including Seward, Alaska, where anglers fish for salmon in Resurrection Bay.

- Coastal development and associated sprawl destroy and endanger coastal wetlands and estuaries that serve as nurseries for many valuable fishery species. More than 20,000 acres of these sensitive habitats disappear each year. Paved surfaces have created expressways for oil, grease, and toxic pollutants into coastal waters. Every eight months, nearly 11 million gallons of oil run off our streets and driveways into our waters—the equivalent of the *Exxon Valdez* oil spill.
- More than 60 percent of our coastal rivers and bays are moderately to severely degraded by nutrient runoff. This runoff creates harmful algal blooms and leads to the degradation or loss of seagrass and kelp beds as well as coral reefs that are important spawning and nursery grounds for fish. Each summer, nutrient pollution creates a dead zone the size of Massachusetts in the Gulf of Mexico. These types of problems occur in almost every coastal state* and the trends are not favorable. If current practices continue, nitrogen inputs to U.S. coastal waters in 2030 may be as much as 30 percent higher than at present and more than twice what they were in 1960.
- Many ecologically and commercially crucial fish species, including groundfish and salmon populations along the Atlantic and Pacific Coasts, face overfishing and numerous other threats. Thirty percent of the fish populations that have been assessed are



Nutrient pollution of coastal waters causes excessive algae growth on coral reefs such as this one off Hawaii. Other major threats to reefs include climate change, overfishing, and sediment runoff resulting from development and agriculture.

- overfished or are being fished unsustainably. An increasing number of these species are being driven toward extinction. Already depleted sea turtle, marine mammal, seabird, and noncommercial fish populations are endangered by incidental capture in fishing gear. Destructive fishing practices are damaging vital habitat upon which fish and other living resources depend. Combined, these aspects of fishing are changing relationships among species in food webs and altering the functioning of marine ecosystems.
- Invasive species are establishing themselves in our coastal waters, often crowding out native species and altering habitat and food webs. More than 175 introduced species thrive in San Francisco Bay alone. Nearly one million Atlantic salmon escaped from farm pens on the western coast of North America in the last 15 years. The species is now successfully

*As used in this report, the terms "state" or "states" mean any or all of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

reproducing in British Columbia rivers and diluting the gene pool of native species by hybridizing with Pacific salmon. New species are regularly finding a home around our coastlines as hitchhikers in ship ballast water or on ship hulls, escapees from fish farms, and even as discarded home aquarium plants and animals. Of the 374 documented invasive species in U.S. waters, 150 have arrived since 1970.

In addition to these varied threats, climate change over the next century is projected to profoundly impact coastal and marine ecosystems. Sea-level rise will gradually inundate highly productive coastal wetlands, estuaries, and mangrove forests. Coral reefs that harbor exceptional biodiversity will likely experience increased bleaching due to higher water temperatures. Changes in ocean and atmospheric circulation attributable to climate change could adversely affect coastal upwelling and productivity and have significant local, regional, and global implications on the distribution and abundance of living marine resources.

These are just some of the signs that our interactions with the oceans are unsustainable. Our activities, from those that release pollutants into rivers and bays to the overfishing of the seas, are altering and threatening the structure and functioning of marine ecosystems—from which all marine life

springs and upon which all living things, including humans, depend.

SEEDS OF CRISIS

The root cause of this crisis is a failure of both perspective and governance. We have failed to conceive of the oceans as our largest public domain, to be managed holistically for the greater public good in perpetuity. Our oceans span nearly 4.5 million square miles,* an area 23 percent larger than the nation's land area. Similarly, we have only begun to recognize how vital our oceans and coasts are to our economy as well as to the cultural heritage of our nation. Finally, we have come too slowly to recognize the interdependence of land and sea and how easily activities far inland can disrupt the many benefits provided by coastal ecosystems.

The foundation of U.S. ocean policy was laid in a very different context than exists today. The principal laws to protect our coastal zones, endangered marine mammals, ocean waters, and fisheries were enacted 30 years ago, on a crisis-by-crisis, sector-by-sector basis. Much of what exists of an ocean governance system in this country can be traced to recommendations of the Stratton Commission—the nation's first review of ocean policy in 1969. Driven by the need to ensure the "full and wise use of the marine environment," Stratton focused on oceans as a frontier with vast resources, and largely rec-

*This is the approximate area (in square statute miles) of the United States Exclusive Economic Zone (EEZ)—the area of the oceans over which the United States exercises exclusive environmental and economic jurisdiction. The U.S. EEZ was established by Presidential Proclamation in 1983. The establishment of an EEZ extending 200 nautical miles from the shoreline of a coastal nation is recognized and accepted under the United Nations Convention on the Law of the Sea.



Commissioners tour a cannery in Kodiak, Alaska, home port for more than 700 trawl, longline, and crab vessels

ommended policies to coordinate the development of ocean resources

Reflecting the understanding and values of this earlier era, we have continued to approach our oceans with a frontier mentality. The result is a hodgepodge of ocean laws and programs that do not provide unified, clearly stated goals and measurable objectives. Authority over marine resources is fragmented geographically and institutionally. Principles of ecosystem health and integrity, sustainability, and precaution have been lost in the fray. Furthermore, the nation has substantially underinvested in understanding and managing our oceans. The information we do have in hand is often underutilized. Plagued with systemic problems, U.S. ocean governance is in disarray.

A 30-YEAR REVIEW OF OCEAN POLICY

More than 30 years after the Stratton Commission issued its recommendations, the state of our oceans and coasts is vastly altered. Although some of the problems that were considered 30 years ago remain with us today, new environmental, economic, and policy challenges have emerged. These challenges exceed the capacity of today's governance framework and management regimes.

Our perspective on ocean resources and policy has also changed over 30 years. We are increasingly aware that development activities can change marine environments. We are learning more about complex interactions in marine ecosystems and the need to maintain the diversity and resilience of those complex and adaptive natural systems. Today, there is a

clear sense that we must do a better job of protecting the oceans if we hope to continue to enjoy their benefits

The Pew Oceans Commission, a bipartisan, independent group of American leaders, was created to chart a new course for the nation's ocean policy. Our mission is to identify policies and practices necessary to restore and protect living marine resources in U S

waters and the ocean and coastal habitats on which they depend. The Commission was also charged with raising public awareness of the principal threats to marine biodiversity and of the importance of ocean and coastal resources to the U S economy.

The Commission brought together a diverse group of American leaders from the worlds of science, fishing, conservation, government, education, business, and philanthropy. It secured the help of leading scientists to determine priority issues and to write reports summarizing the best scientific information available on those subjects (see list of publications on page 136). The Commission organized into four committees to review the core issues of governance, fishing, pollution, and coastal development. It also investigated marine aquaculture, invasive species, ocean zoning, climate change, science, and education.

For more than two years, the Commission conducted a national dialogue on ocean issues. We convened a series of 15 regional meetings, public hearings, and workshops to listen to those who live and work along the coasts. From Maine to Hawaii, Alaska to the Gulf of Mexico, we spoke with hundreds of citizens, fishermen, scientists, government officials, tourism operators, and business leaders. Commissioners held a series of 12 focus groups with fishermen, including one in Kodiak, Alaska, which is among the nation's oldest and largest fishing communities. Believing that experience is the best teacher, Commissioners went lobster fishing in Maine, toured a pineapple plantation in Hawaii to learn about ways to control polluted runoff, and visited coastal habitat restoration projects in New York and South Carolina.

By speaking with those who live and work along the coasts and around the country, and by collecting the best scientific information available, the Commission learned a great deal about the problems facing our oceans, the consequences to coastal communities and the nation if we fail to act, and actions needed to overcome the crisis facing our oceans. The status quo is unacceptable. Future generations will judge this generation on whether it shoulders its responsibility.

CONCLUSIONS AND RECOMMENDATIONS

The fundamental conclusion of the Pew Oceans Commission is that this nation needs to ensure healthy, productive, and resilient marine ecosystems for present and future generations. In the long term, economic sustain-



Senator Ernest Hollings (D-SC) welcomes Leon Panetta, Dana Beach of the South Carolina Coastal Conservation League, and Deb Antonelli of the Pew Oceans Commission at the release of Mr. Beach's report on coastal sprawl.

ability depends on ecological sustainability

To achieve and maintain healthy ecosystems requires that we change our perspective and extend an ethic of stewardship and responsibility toward the oceans. Most importantly, we must treat our oceans as a public trust. The oceans are a vast public domain that is vitally important to our environmental and economic security as a nation. The public has entrusted the government with the stewardship of our oceans, and the government should exercise its authority with a broad sense of responsibility toward all citizens and their long-term interests.

These changes in our perspective must be reflected in a reformed U.S. ocean policy. National ocean policy and governance must be realigned to reflect and apply principles of ecosystem health and integrity, sustainability, and precaution. We must redefine our relationship with the ocean to reflect an understanding of the land-sea connection and organize institutions and forums capable of managing on an ecosystem basis. These forums must be accessible, inclusive, and accountable. Decisions should be founded upon the best available science and flow from processes that are equitable, transparent, and collaborative.

To embrace these reforms and achieve our goal, the nation must realize five priority objectives:

- 1 Declare a principled, unified national ocean policy based on protecting ecosystem health and requiring sustainable use of

ocean resources

- 2 Encourage comprehensive and coordinated governance of ocean resources and uses at scales appropriate to the problems to be solved
 - a The regional scale of large marine ecosystems is most appropriate for fisheries management and for governance generally
 - b Coastal development and pollution control is most appropriately addressed at the watershed level
- 3 Restructure fishery management institutions and reorient fisheries policy to protect and sustain the ecosystems on which our fisheries depend
- 4 Protect important habitat and manage coastal development to minimize habitat damage and water quality impairment
- 5 Control sources of pollution, particularly nutrients, that are harming marine ecosystems

The Commission recommends the following actions to achieve these objectives:

Governance for Sustainable Seas

- 1 Enact a National Ocean Policy Act to protect, maintain, and restore the health, integrity, resilience, and productivity of our oceans
- 2 Establish regional ocean ecosystem councils to develop and implement enforceable regional ocean governance plans
- 3 Establish a national system of fully protected marine reserves
- 4 Establish an independent national oceans agency

- 5 Establish a permanent federal interagency oceans council

Restoring America's Fisheries

- 1 Redefine the principal objective of American marine fishery policy to protect marine ecosystems
- 2 Separate conservation and allocation decisions
- 3 Implement ecosystem-based planning and marine zoning
- 4 Regulate the use of fishing gear that is destructive to marine habitats
- 5 Require bycatch monitoring and management plans as a condition of fishing
- 6 Require comprehensive access and allocation planning as a condition of fishing
- 7 Establish a permanent fishery conservation and management trust fund

Preserving Our Coasts

- 1 Develop an action plan to address non-point source pollution and protect water quality on a watershed basis
- 2 Identify and protect from development habitat critical for the functioning of coastal ecosystems
- 3 Institute effective mechanisms at all levels of government to manage development and minimize its impact on coastal ecosystems
- 4 Redirect government programs and subsidies away from harmful coastal development and toward beneficial activities, including restoration

Cleaning Coastal Waters

- 1 Revise, strengthen, and expand pollution laws to focus on nonpoint source pollution

- 2 Address unabated point sources of pollution, such as concentrated animal feeding operations and cruise ships
- 3 Create a flexible framework to address emerging and nontraditional sources of pollution, such as invasive species and noise
- 4 Strengthen control over toxic pollution

Guiding Sustainable Marine Aquaculture

- 1 Implement a new national marine aquaculture policy based on sound conservation principles and standards
- 2 Set a standard, and provide international leadership, for ecologically sound marine aquaculture practices

Science, Education, and Funding

- 1 Develop and implement a comprehensive national ocean research and monitoring strategy
- 2 Double funding for basic ocean science and research
- 3 Improve the use of existing scientific information by creating a mechanism or institution that regularly provides independent scientific oversight of ocean and coastal management
- 4 Broaden ocean education and awareness through a commitment to teach and learn about our oceans, at all levels of society

This nation must decide how it will choose to meet the crisis in our oceans. Fundamentally, this is not a decision about us. It is about our children, and actions we must take to bequeath them thriving oceans and healthy coastlines.

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This is our challenge. To meet this challenge, the nation must substantially increase its investment in understanding and managing its oceans. We need a much greater financial commitment to strengthen governance and management infrastructure, to improve our scientific understanding of marine ecosystems and human impacts, and to educate all

Americans about the oceans.

If properly executed, this investment will be paid back manyfold in the form of abundant living ocean resources for centuries ahead. Without this investment, we risk further decline in ocean ecosystem health and serious consequences for human well-being far into the future.



Commissioner Carlotta Leon Guerrero (above) joined Hawaiian schoolchildren for a taping of KidScience, produced jointly by the Hawaii Department of Education and Hawaii Public Television, during the Commission's visit to Hawaii in February 2001.

RETAIL ADVERTISING RATES

ADVERTISING RATES

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